

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

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MASON TENDERS DISTRICT COUNCIL OF
GREATER NEW YORK, MASON TENDERS
DISTRICT COUNCIL WELFARE FUND, PENSION
FUND, ANNUITY FUND, TRAINING FUND, HEALTH
AND SAFETY FUND, and JOHN J. VIRGA, as
FUNDS' DIRECTOR,

Plaintiffs,

PHASE CONSTRUCTION SERVICES, INC., and
SL CONSTRUCTION GROUP, INC.,

Defendants.
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14-cv-6016(ER)

**ORAL ARGUMENT
REQUESTED**

PLAINTIFFS' NOTICE OF MOTION

PLEASE TAKE NOTICE that upon Plaintiffs' Memorandum of Law dated May 27, 2016 and the Proposed Amended Complaint annexed hereto, and all prior pleadings and proceedings heretofore had herein, Plaintiffs Mason Tenders District Council of Greater New York ("Union"), Mason Tenders District Council Welfare Fund, Pension Fund, Annuity Fund, Training Fund, Health and Safety Fund ("Fund") and John J. Virga, in his fiduciary capacity as Funds' Director, by and through their undersigned attorneys, will move this Court, before the Honorable Edgardo Ramos, United States District Court Judge for the Southern District of New York, at the United States Courthouse, 40 Foley Square, New York, New York, at a date and time to be decided by the Court, for an Order, pursuant to Fed. R. Civ. P. 15(a) (c) (d), 16(b)(4), 20(a)(2) and 21, granting Plaintiffs leave to amend their Complaint to:

- 1) add Phase NY and Salvatore La Barca ("La Barca") as defendants;

- 2) hold Phase NY jointly and severally liable with SL and Phase Construction for the delinquent contributions, unremitted dues and PAC monies found due and owing by the audit;
- 3) hold all Corporate Defendants bound by the Union's collective bargaining agreement;
- 4) compel the Corporate Defendants to submit to audits for the period December 30, 2013 to the present and hold them jointly and severally liable for any monies found due and owing;
- 5) hold La Barca jointly and severally liable with the Corporate Defendants for their delinquencies;
- 6) enjoin the Corporate Defendants from making any more personal loans to La Barca or distributing corporate funds to La Barca for his personal account until all monies due to the Plaintiffs, including their attorneys' fees and costs, are paid;
- 7) compel La Barca to:
 - a. cooperate in an audit of the Corporate Defendants; and
 - b. provide an accounting to Plaintiffs of his use of corporate funds for his personal account;
- 8) enjoin La Barca from disposing of any personal assets purchased or maintained with corporate funds;
- 9) create a constructive trust in the proceeds of La Barca's disposition of any personal assets purchased or maintained with corporate funds; and
- 10) hold La Barca and the Corporate Defendants jointly and severally liable for Plaintiffs' attorneys' fees and costs.

PLEASE TAKE FURTHER NOTICE that, pursuant to the Court's Order of April 14, 2016, Defendants' opposing papers, if any, must be served by June 27, 2016, and Plaintiffs' reply papers, if any, must be served by July 11, 2016.

Dated: New York, New York
May 27, 2016

GORLICK, KRAVITZ & LISTHAUS, P.C.
Attorneys for Plaintiffs

By: 

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